

**Law Offices of Michael Lupolover, P.C.
180 Sylvan Avenue, 2nd Floor
Englewood Cliffs, New Jersey 07632
(P) 201.461.0059
(E) David@Lupoloverlaw.com**

**United States District Court
District of New Jersey**

Sean Kim,) Case No.:
Plaintiff,)
vs.)
Midland Credit Management,) CIVIL COMPLAINT AND
Defendant) DEMAND FOR JURY TRIAL

Plaintiff, SEAN KIM, on behalf of himself (hereinafter "Plaintiff"), by and through his undersigned attorney, alleges against the Defendant, MIDLAND CREDIT MANAGEMENT (hereinafter "Defendant") as follows:

PRELIMINARY STATEMENT

1. This is an action for damages arising from Defendant's violations of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §1692k (d)
3. Venue is proper in this district under 28 U.S.C § 1391(b).

PARTIES

4. Plaintiff is a natural person, who at all relevant times has resided in the in the city of East Brunswick, New Jersey, and is a “consumer” as defined by 15 U.S.C. § 1692a(3).

5. Defendant is incorporated and doing business in the State of California, with its corporate mailing address as 8875 Aero Drive, Suite 200 San Diego, CA 92123, and is a "debt collector" as defined by 15 U.S.C § 1692a(6).

FACTUAL STATEMENT

6. Defendant was trying to collect an alleged debt owed by Plaintiff.

7. On or around December 27, 2013, Plaintiff received a phone call from an agent of Defendant.

8. Plaintiff failed to answer the call and a message was subsequently left by agent of Defendant.

9. The message begins with an automated message states that “We apologize for the delay, but you will be connected in just a moment” and music plays in the interim.

10. Approximately thirty seconds into the recording, the music stops and a person asks to speak to Plaintiff. Upon realizing the phone has not been answered, agent hangs up.

11. Defendant's agent fails to identify that the call is a from a debt collector attempting to collect a debt.

COUNT I

VIOLATION OF THE FAIR DEBT COLECTIONS PRACTICES ACT
15 U.S.C. § 1692e (11)

12. Plaintiff repeats the allegations contained in paragraphs 1 through 11 and incorporates them as if set forth at length herein.

13. On or around December 27, 2013, Defendant left a voicemail for Plaintiff which failed to identify the company or the purpose of the phone call.

14. The voicemail message failed to state the message was from a debt collector attempting to collect a debt.

1 15. Defendant's failure to advise of the fact that the call was from a debt collector violates 15
2 U.S.C. § 1692e (11).

3 16. As a direct result of Defendant's actions, Plaintiff has been damaged.

4 **COUNT II**
5 **VIOLATION OF THE FAIR DEBT COLLECTIONS PRACTICES ACT**
6 **15 U.S.C. § 1692d(6)**

7 17. Plaintiff repeats the allegations set forth in paragraphs 1 through 16 and incorporates
8 same as if set forth at length herein.

9 18. On or around December 27, 2013, Defendant left a voicemail message for Plaintiff.

10 19. Defendant's representative failed to state the identity of the company from which she was
11 calling or that the purpose of the call was to collect a debt.

13 20. The failure to inform Plaintiff of the identity of the company or the purpose of the phone
14 call is in violation of 15 U.S.C. § 1692d(6), which prohibits placing telephone calls without
15 meaningful disclosure of the caller's identity.

16 21. As a direct result of Defendant's actions, Plaintiff has been damaged.

18 **COUNT III**
19 **VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT**
20 **47 U.S.C. § 227**

21 22. Plaintiff repeats the allegations contained in paragraphs 1 through 21 and incorporates
22 them as if set forth at length herein.

23 23. The telephone calls to Plaintiff from Defendant were done utilizing an automated dialer
24 with a pre-recorded message.

26 24. Plaintiff does not have an established business relationship with Defendant as that term is
27 defined by 47 U.S.C. § 227(a)(2).

28 25. Defendant's telephone call was made without Plaintiff's consent.

1 26. Defendant's actions constitute (1) willful violation of 47 U.S.C. § 227(b)(1)(A)(iii), to
2 which their falls no exemption to their behavior.

3 **JURY TRIAL DEMAND**

4 27. Plaintiff demands a trial by jury on all issues so triable.

5 **RELIEF**

6 WHEREFORE, Plaintiff, Sean Kim, requests that this Court enter judgment against the
7 Defendant, and on behalf of Plaintiff for the following:

8 a. That an order be entered declaring the Defendant's actions, as described above, in
9 violation of the FDCPA and the TCPA;

10 b. That judgment be entered against Defendant for (1) willful violation of 47 U.S.C. §
11 227b(1)(A)(iii);

12 c. That judgment be entered against Defendant for statutory damages in the amount of One
13 Thousand Five Hundred Dollars (\$1,500.00) for (1) willful violations of 47 U.S.C. §
14 227(b)(1)(A)(iii);

15 d. That judgment be entered against the Defendant for actual damages, pursuant to 15
16 U.S.C. § 1692k(a)(1);

17 e. That judgment be entered against the Defendant for statutory damages, pursuant to 15
18 U.S.C. § 1692k(a)(2)(A) and (B), in the amount of \$1,000.00;

19 f. That the court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1692k
20 (a)(3);

21 g. That the Court grant such other and further relief as may be just and proper.

1 Dated July 1, 2014
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Respectfully Submitted,

s/ David P. Force

David P. Force
Law Offices of Michael Lupolover
180 Sylvan Avenue, Suite 5
Englewood Cliffs, NJ 07632
201-461-0059
David@lupoloverlaw.com

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